

**THIS DISPOSITION  
IS NOT CITABLE AS PRECEDENT  
OF THE T.T.A.B.**

Paper No. 11

8/8/00

**UNITED STATES PATENT AND TRADEMARK OFFICE**

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**Trademark Trial and Appeal Board**

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In re Fans London Limited

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Serial No. 75/185,247

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**Jody H. Armstrong** of Killworth, Gottman, Hagan & Schaeff,  
L.L.P. for Fans London Limited.

Robert Clark, Trademark Examining Attorney, Law Office 108  
(David Shallant, Managing Attorney).

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Before **Simms**, Cissel and Quinn, Administrative Trademark  
Judges.

Opinion by **Cissel**, Administrative Trademark Judge:

On October 22, 1996, applicant, a company organized under the laws of England and Wales, filed an application in United States Patent and Trademark Office to register the mark "FANS LONDON" on the Principal Register for what were subsequently identified by amendment as "handbags; trunks and suitcases; briefcases; tote bags; rucksacks; backpacks; shoulder bags; duffel bags; toiletry bags, sold empty and vanity cases sold empty; waist bags; articles of

luggage; purses; wallets; key fobs; key cases; umbrellas; parasols; animal skins and animal hides; leather, imitation leather and moleskin sold in bulk, and articles made of those materials; namely, handbags, trunks and suitcases, briefcases, tote bags, rucksacks, backpacks, shoulder bags, duffel bags, toiletry bags, sold empty, and vanity cases, sold empty, waist bags, articles of luggage, purses, wallets, key fobs, key cases, umbrellas and parasols," in Class 18; and "articles of clothing; namely stockings, tights; shirts, t-shirts, casual tops and polo shirts, sweatshirts, jeans, trousers, shorts, waistcoats, suits, pullovers, sweaters, skirts, leggings, tops, dresses, blouses, cardigans; underwear; hosiery; coats; jackets; shawls; hats; scarves, socks, gloves, belts, ties, cravats; headwear and footwear; shoes; slippers; boots," in Class 25. The stated basis for filing the application was applicant's assertion that it possessed a bona fide intention to use the mark in commerce in connection with the specified goods. The application was amended to disclaim the exclusive right to use "LONDON" apart from the mark as shown.

This case now comes before the Board on appeal from the Examining Attorney's final refusal to register the mark under Section 2(d) the Lanham Act on the ground that

applicant's mark, if used in connection with the Class 25 goods set forth in the application,<sup>1</sup> would so resemble the mark shown below

which is registered<sup>2</sup>, with a disclaimer of the word "GEAR," for "jackets, coats, warm-up suits, and windsuits," in Class 25, that confusion would be likely.

Both applicant and the Examining Attorney filed appeal briefs, but applicant did not request an oral hearing before the Board. Based on a careful consideration of the written record and the arguments presented on appeal, we hold that the refusal to register is appropriate in this case because if applicant were to use the mark it seeks to register in connection with the goods in Class 25 specified in the application, confusion would be likely in view of the cited registered mark.

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<sup>1</sup> The refusal to register originally had been extended to the goods in Class 18, but the Examining Attorney withdrew the refusal as to the goods in that class.

<sup>2</sup> Reg. No. 2,077,125 issued on the Principal Register on July 8, 1997 to Pro Player, Inc. Use in commerce since May of 1994 is claimed in the registration.

In *In re duPont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973), the predecessor of our primary reviewing court listed the principal factors to be considered in determining whether a likelihood of confusion exists. Chief among these factors are the similarity of the marks as to appearance, sound, meaning and commercial impression, and the commercial relationship between the goods or services in question, including the channels of trade through which the goods or services move and the level of sophistication of the respective purchasers of them.

In the instant case, confusion would be likely because the Class 25 goods specified in the application are in part identical and are otherwise closely related to the goods listed in the registration (both are for related items of apparel and both include "jackets"), and the mark applicant seeks to register is similar to the mark shown in the registration.

It is well settled that in a situation where the goods are identical, in order for confusion to be likely, the marks in question do not have to be as much alike as would be the case if the products they identified were not the same. *ECI Division of E Systems, Inc. v. Environmental Communications Inc.*, 207 USPQ 443 (TTAB 1980).

In the case at hand, however, the marks are quite similar because the dominant portion of each is the same word, "FANS." Although whether confusion is likely must always rest on comparison of the marks in their entireties, nevertheless, one feature or word in a particular mark may be recognized as having greater source-identifying significance than others. In *re National Data Corp.*, 732 F.2d 1056, 224 USPQ 749 (Fed. Cir. 1985). Typically, terms that are merely descriptive of the goods in question or are geographically descriptive of them carry less weight in this regard than words or designs which are arbitrary or fanciful. In *re Continental Graphics Corp.*, 52 USPQ2d 1374 (TTAB 1999); and In *re Appetito Provisions Co.*, 3 USPQ2d 1553 (TTAB 1987).

In the instant case, although the registered mark is presented in a somewhat stylized form, the word "GEAR" is shown only in small block letters along the shading below the letter "S" in the stylized presentation of the word "FANS." None of the design or stylistic elements is particularly distinctive. The word "FANS" is clearly the dominant portion of the registered mark. "FANS" is three or four times larger than the descriptive, clearly subordinate term "GEAR," which has little or no trademark significance itself in connection with the apparel items

and accessories listed in the registration, and accordingly has been disclaimed.

The same word "FANS" is also the dominant portion of the mark applicant seeks to register. The geographically descriptive, and hence disclaimed, word "LONDON" would be readily understood as an indication that the goods bearing applicant's mark emanate from the capital of England or are styled like clothing popular there. As used in the mark "FANS LONDON," "FANS" does not appear to have any descriptive or suggestive significance in connection with clothing. This apparently arbitrary word plainly would have more significance than "LONDON" as an indication of the commercial source of the goods.

Confusion would be likely if both the registered mark and the mark applicant seeks to register were to be used on jackets because "FANS" is the dominant element of each mark. Purchasers familiar with clothing sold under the registered mark would likely interpret the mark "FANS LONDON" on identical clothing items as an indication that they come from the London branch or affiliate of the business responsible for other clothing labeled "FANS GEAR," or even that "FANS LONDON" is used to emphasize the fact that registrant's jackets are made in or styled in the fashion of London.

Applicant's arguments that confusion would not be likely if it were to use the mark it seeks to register on the goods listed in the application are not persuasive.

Applicant submitted copies of the results of its search of a private database of registration information. The print-outs purport to show the registration of several third-party marks incorporating "FAN." Applicant argues that this evidence shows "that the common use of this term renders it less prominent for purposes of comparison." (brief, p.13). Copies of these alleged registrations were not submitted, but even copies of these registrations would not show use of the marks therein, however, such that the Board could conclude that the apparel-purchasing public has been exposed to the use and promotion of marks with "FANS" as a component to the extent that other elements in such marks serve to distinguish the sources of the products which bear them. *Lilly Pulitzer, Inc. v. Lilli Ann Corp.*, 376 F.2d 324, 153 USPQ 406 (CCPA 1967).

Applicant contends that the coexistence of these registrations on the register, including several for marks which were originally cited as bars to the instant application under Section 2(d) but later withdrawn, is an indication that applicant's mark could coexist on the register as well. It is well settled, however, that even

if it appears that marks likely to cause confusion with each other have been registered, this does not justify registration of yet another mark which would be likely to cause confusion with any of them. *Lilly Pulitzer, Inc. v. Lilly Ann Corp.*, supra.

In summary, if applicant were to use the mark it seeks to register on the Class 25 goods listed in the application, the ordinary consumers who purchase clothing who are familiar with the cited registered mark for jackets would be likely to believe that registrant is the source of applicant's jackets. This is precisely the kind of confusion that Section 2(d) of the Act is intended to avoid. If we were left with any doubt as to whether confusion would be likely, such doubt would have to be resolved in favor of the registrant and against the applicant, who, as the newcomer, had a duty to choose a mark that would not be likely to cause confusion with the prior used and registered mark. *Burroughs Wellcome Co. v. Warner-Lambert Co.*, 203 USPQ 191 (TTAB 1979).



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Accordingly, the refusal to register as to the goods in Class 25 is affirmed. Upon expiration of the period in which applicant may appeal this ruling, the application will be forwarded for publication as to the goods in Class 18.

R. L. Simms

R. F. Cissel

T. J. Quinn  
Administrative Trademark Judges,  
Trademark Trial & Appeal Board

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